HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Petition No.10138 of 2006

Between:

Kukatpally Environmental Protection Society,
rep. by its Secretary, B. Haribabu … Petitioner

And

Government of Andhra Pradesh,
rep. by its Principal Secretary, Housing
Department, Secretariat, Hyderabad and others
… Respondents

:: ORDER::

Counsel for the Petitioner: Sri N. Harinath Reddy

Counsel for Respondents:

June 05, 2006

Per G.S. Singhvi, CJ

In this petition filed by Kukatpally Environmental Protection Society in the name of public interest litigation, prayer has been made to issue mandamus to Municipal Commissioner, Kukatpally Municipality to retrieve the open places marked Nos.3 and 5 in the layout plan meant for KPHB Colony, Ranga Reddy District and to restrain respondent No.3 from raising any further construction in the open places meant for public park.

In the affidavit filed by Sri B. Haribabu, who has described himself as Secretary of the petitioner society, it has been averred that six open places earmarked for parks are being used by the residents of the colony in the morning and evening and the society has developed the same into beautiful parks. He has further averred that respondent No.3-Indu Projects has occupied a big open place earmarked for park and also erected barricade on the main road. This has been done with a view to develop township. According to Sri Haribabu, if respondent No.3 is allowed to occupy the open place meant for park, the members of the society will be deprived of their legitimate right to use that place.

We have heard Sri N. Harinath Reddy and perused the record. In our opinion, the writ petition is liable to be dismissed because the contentious issues of fact which require adjudication as a condition precedent for determination of the issue relating to the alleged encroachment of public land (municipal park) by respondent No.3 cannot be decided by this Court. The question whether the site/land over which respondent No.3 is said to have put up barricade and intending to raise construction is park is a pure question of fact. Likewise, the question whether the disputed construction is on the land earmarked for Public Park is also a pure question of fact. These and other related questions can properly be decided by civil court on the basis of evidence which the parties may produce during the course of trial. Therefore, we are not inclined to exercise extraordinary jurisdiction of this Court in favour of the petitioner merely because the

petition has been described as one filed in public interest.

The photographs on which reliance has been placed by the petitioner do not show that the iron barricade has been erected over the land earmarked for park. Rather, one of the photographs shows that a transformer has been erected near the land meant for septic tank.

For the reasons stated above, the writ petition is dismissed leaving the petitioner free to avail the remedy of filing civil suit. It will also be open to the petitioner to file an application for temporary injunction.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

June 05, 2006
ARS / svs